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applications. Therefore, claims 2-57 are granted a priority date of October 30, 2000 for

purposes of applying prior art."

Applicants respectfully disagree. As this application claims, the dynamic contracts

manager supplies an initial set of terms for use by a user. At page 79, lines 1-3 of the

present application, it is stated that:

"To initiate a major new negotiation, sponsor 06 uses dynamic contract CP06 of the

present invention to transform the business rules of the sponsored community into the

active templates CP08 of the present invention."

In all of the parent applications, the sponsored community is disclosed, as are the use of

templates, rules for the community and so on. For example, in US Patent 6.141.653, one

of the parent cases, this support is found at Col. 28, lines 38-65:

> Sponsored Community
>
> With reference now to FIG. 1j, a diagram of the sponsor functions 213 is shown.
> Generally speaking, a sponsor 06 builds a community and establishes its rules
> 213-02. In one embodiment, a sponsor 06 can create the community Website
> from templates available from multivariate negotiation system 02's site. In other
> embodiments, a sponsor may have already invested millions of dollars in the
> creation of its own database(s) and Website, and simply wants to have the
> community enabled from there, using applications programming interfaces
> (API's) or the new XML language when it is standardized. The present invention
> permits either or both methods of creating or enabling a community Website.
>
> As seen in FIG. 24, the rules or standards for the community can be as
> comprehensive or as simple as the sponsor 06 desires. For a commercial site, for
> example, sponsor 06 may want to require all sellers to be compliant with a
> particular standards organization's applicable quality standards, such as the
> International Standards Organization (ISO), shown as R1 here. Additionally,
> sponsor 06 may want to insure that all fees due to sponsor from sellers are paid
> in full and kept up to date--rule R5. As another example, a sponsor for a regional
> trade development community may want to insure that each seller is able to
> handle importing and exporting of goods--rule R3, meets some specified

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<u>minimum performance capabilities such as rule R6, just-in-time capability or rule R7, bar code processing, or rule R8, ability to handle specified payment methods.</u> [Emphasis added]

Applicants respectfully submit that the present application should be granted the priority date of the parent applications.

<u>Claims 2-57 were rejected under 35 USC 112,</u> second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The Examiner wrote that:

"the scope of the recited "item to be developed" in claim 2 is ambiguous. It is not clear whether the item to be developed refers to the negotiation contract and/or product or services being negotiated (as suggested in claims 3 and 4) or whether the "item to be developed is a tangible objected [sic] that will physically be manufactured according to the final negotiated terms. However, claim 6 recites 'a multimedia transmittal function for transmitting an item being capable of being transmitted in electronic form as the item's development is being negotiated and performed. This particular recitation raises the question of whether or not the item is the product or service or the actual negotiations related to a subject of the negotiations. If the item is a product or service it is not clear how it can be transmitted in an electronic form as the item's development is being negotiated and performed. How can an item that hasn't been completely developed yet be transmitted electronically during negotiations, especially if it's a physical product or service to be rendered? Furthermore, claim 12 recites 'programming tools for automating product design and development.' Again, is the product the same as the recited 'item'? If so, does the design and development of the product refer to negotiations related to the product or an actual creation of a physical product to be manufactured? There are so many inconsistencies throughout the claims that claims 2-15 are deemed to be vague and indefinite.

Claim 13 recites 'computer programs for tracking and analyzing costs and performance data'; however, it is not clear what the costs refer to. Are they negotiated cost terms or costs related to using the negotiations software? also, relative to whom or what is the 'performance data' measured? Is it the performance, or progress, of the negotiations process?

Claims 16-57 recite limitations that are substantially similar to those recited in claims 2-15 above, therefore, the same rejections apply.

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Applicants respectfully disagree. Claim 2 recites:

> An apparatus for iterative development negotiations, comprising:
>
> a dynamic contracts manager for supplying an initial set of terms for use by a user, the <u>terms specifying an item to be developed</u>

The item to be developed is not a contract but a product or service. What is being

negotiated, as the above makes clear, is the terms specifying the development of that

item. The terms specifying the item to be developed could refer to a tangible item which

will be physically manufactured. But, as claim 6 makes clear, if the item to be

developed is an intangible item, that is, one <u>capable of being transmitted in electronic</u>

<u>form</u>, such as a computer program or PLC coding for a lathe as described in the

specification, the item to be developed can be transmitted electronically while it is still

in development. It is commonplace for software programs and similar kinds of

products, to be transmitted electronically during development. Portions or modules of

code can be sent. If the product is a movie or television program capable of being stored

in digital format, it, too, can be transmitted electronically while still in development. For

tangible products which cannot be sent electronically, the system of the present

invention can be used to negotiate the specifications for the item--as the claim recites

"the terms <u>specifying</u> an item to be developed." Claim 6 does not recite transmitting

items that cannot be transmitted in electronic form, such as physical objects.

With respect to claim 13, which recites "computer programs for tracking and analyzing

costs and performance data", it should be noted that Claim 13 depends from Claim 9,

which recites "wherein the predefined formats further comprise functions for activating

computer programs." The system of the present invention enables a user to predefine

computer functions to be activated. Since the users of the system can customize their

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templates and functions as they see fit, these programs would be programs selected by

the user and would typically track whatever the user wishes to analyze. In typical

negotiations about the development of products, these programs might track the

ongoing costs of product development and the resulting product's performance, if that

is what the user wishes.

Applicants submit that the claims, as presently constituted are not vague or ambiguous,

but clearly point out the present invention. Applicants respectfully submit that this

basis for rejection has been overcome.

<u>Claims 2-57 were rejected under 35 USC Section 102</u> as being anticipated by INSS.

The Examiner stated that:

INSS discloses an apparatus for iterative development negotiations, comprising:
[Claim 2] a dynamic contracts manger for supplying an initial set of terms for use by a
user, the terms specifying an item to be developed (Pages 6 and 8—Setting up the
details of a negotiation, including the product or service to be negotiated, or developed,
as well as the terms subject to negotiations is required; and

a multivariate negotiations system including storage space and negotiations software
(Page 1—"INSS is a Web-based negotiation support system"; Pages 10-11, 15—A history
of offers and messages may be accessed; therefore, offer and message information must
be stored, esp. since it is used to generate a graph of the respective histories), such
negotiations software executing in a processor and including an automated negotiations
engine for analyzing terms, the analysis of terms comprising understanding the
purpose of the terms, formatting the terms according to the purpose, and placing them
into user supplied context for use by a user (Pages 2, 8-13—The fact that the offer
history data is maintained, graphed, a and used by the negotiation software to
determine if an optimal agreement has been reached or suggest a Pareto-optimal
agreement for both parties is indicative of the fact that INSS itself analyzes and
understands the negotiation terms), the automated negotiations engine being
responsive to a destination terminal....such automated negotiations engine further
recognizing any changes in the terms ..."

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Applicants respectfully disagree. INSS is not a negotiations system at all, it does not

claim to be one, does not disclose one, and does not render one obvious. It is exactly

what it says it is: a negotiation support system that uses a negotiation simulator. See

page 1, the first paragraph, which states:

"INSS is a Web-based negotiation support system. It contains a facility for specification and assessment of preferences, internal messaging system and graphical displays of the negotiation progress. The system is comprehensive and flexible so that it can be used in five ways:
1. game,
2. demonstration decision support system,
3. negotiation simulator,
4. a demonstration negotiation support system, and
5. a research and training tool. " [Emphasis in line 1 added]

Negotiations support theory is a subset of decision theory and game theory under the

general academic rubric of operations research. To use either negotiations support or

decision theory, a user specifies values or preferences for issues. In the INSS article, this

is discussed at page 2, Using INSS, Preparation.

"Preparation for the negotiation, during which you study the situation, identify the stakeholders, and develop a very clear understanding of the issues and interests involved. To help you do this step, INSS provides you with a detailed description of your negotiation case and then guides you through a sequence of pages on which you tell the system how important each issue and each alternative is to you. This step is also called preference elicitation. The information so obtained is used by INSS in the next step to give you helpful feedback when constructing new offers or evaluating your counterpart's offers." [Emphasis added]

It is clear from the above, and the rest of INSS, that it allows users to practice

negotiations using a negotiation simulator, which takes data from a case study-- "your

negotiation case" —as the data to be simulated in the model.

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This is also clear from the next paragraph on that page, in which it describes the "actual conduct of the negotiation" as "presenting your side of the case."

See also Page 6, which describes how a user can have the simulator set up to handle a new case study. On Page 1, it is also made clear under the heading "Negotiation Simulator" that "The system is designed so that cases may be entered by users." The negotiation simulator simulates a negotiation and is analogous to a flight simulator program. The flight simulator cannot fly an airplane and a negotiation simulator cannot process a negotiation.

The negotiation support functions of INSS do not process a negotiation, either—they do not analyze terms to understand their purpose. What negotiation support does is analyze the ratings or preference values the users give to the simulated terms to determine whether a particular set of mock terms is a Pareto-optimal agreement for both parties. If the case study has four terms, terms 1, 2, 3 and 4, the INSS negotiation support functions do not care what each mock term means or what its purpose is, they only compute utility functions for the values the user assigns to the terms. Thus term 1, may be the most important to user x, and given a value of 10. It does not matter to a negotiations support system whether term 1 is a price term or a delivery term. What matters is its importance to the user.

Negotiations support is a subset of decision support theory as the INSS article makes clear at Page 1. Both negotiation support and decision support attempt to help people make more optimal choices by assigning values to the options being decided or negotiated. See this excerpt from the Wikipedia website:

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Choice under uncertainty
This area represents the heartland of decision theory. The procedure now referred to as *Expected value* was known from the 17th century. Blaise Pascal invoked it in his famous wager (see below), which is contained in his *Pensées*, published in 1670. The idea of expected value is that, when faced with a number of actions each of which could give rise to more than one possible outcome with different probabilities, the rational procedure is to identify all possible outcomes, determine their values (positive or negative) and the probabilities that they will result from each course of action, and multiply the two to give an expected value. The action to be chosen should be the one that gives rise to the highest total expected value. In 1738 Daniel Bernoulli published an influential paper entitled *Exposition of a New Theory on the Measurement of Risk* in which he uses the St. Petersburg paradox to show that expected value theory must be normatively wrong. He also gives an example in which a Dutch merchant is trying to decide whether to insure a cargo being sent from Amsterdam to St Petersburg in winter, when it is known that there is a 5% chance that the ship and cargo will be lost. In his solution he defines a utility function and computes expected utility rather than expected financial value. In the 20th century, the rise of subjective probability theory, from the work of Frank Ramsey, Bruno de Finetti, Leonard Savage and others, extended the scope of expected utility theory to situations where only subjective probabilities are available. At this time it was generally assumed in economics that that people behave as rational agents and thus expected utility theory also provided a theory of actual human decision-making behaviour under risk. The work of Maurice Allais and Daniel Ellsberg showed that this was clearly not so. The prospect theory of Daniel Kahneman and Amos Tversky placed behavioural economics on a more evidence-based footing. It emphasised that in actual human (as opposed to normatively correct) decision-making "losses loom larger than gains", people are more focused on *changes* in their utility states than the states themselves and estimation of subjective probabilities is severely biased by anchoring.

Since INSS can also be used as a demonstration decision support system, it is applying this general type of analysis to the values the users apply to the mock terms in the simulated negotiation. INSS is not processing a negotiation, just as decision support programs do not make decisions.

The INSS simulation model and negotiation support system does not recognize changes in the terms and indicate those changes to the users. All it does is calculate and display the ratings which result from the simulated negotiation rounds. The graphical displays shown at page 11 do not show what the terms either party entered were. The

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graph shows what the ratings were for each round. It also shows only the ratings applicable to that party.

In other words, the INSS software is not processing a negotiation at all. It is simulating one, and using negotiation support software to show users whether the simulation would achieve the overall ratings the user desires.

Returning to Page 1 of INSS, none of the five uses it describes is as an actual negotiation system. It acknowledges that it can be used as either a game, a demonstration decision support system, a negotiation simulator, a demonstration negotiation support system or a research and training tool. The use of the word "demonstration" suggests even further limitations on use. In any event, the INSS system is not processing a negotiation, it does not analyze terms to understand their purpose and format them according to their purpose or place them in user supplied context. It does not recognize changes in terms, nor could changes be deduced from the graphs it supplies of the ratings of the terms.

The INSS system does not anticipate applicants' invention, nor would the INSS system render a negotiation system obvious.

Applicants respectfully submit that this basis for rejection has been overcome and that Claims 2-57 are in condition for allowance. Reconsideration of all the claims is requested. Allowance of Claims 2-57 at an early date is solicited.

Applicants' Attorney respectfully requests that if she can be of any further assistance in putting all the claims in condition for allowance that she be reached by telephone at

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508-653-8143 in order to discuss the application with the Examiner, so that any new

objections or rejections may be addressed.

Respectfully submitted,

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